



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Consolidated Devices, Inc.

File: B-232651.2

Date: December 8, 1989

DIGEST

1. Protest alleging improprieties in conduct of procurement is dismissed as untimely where filed more than 10 working days after basis of protest is known or should have been known through receipt of information released pursuant to initial Freedom of Information Act (FOIA) request; filing of a second FOIA request does not toll General Accounting Office's timeliness requirements.

2. Protest allegations concerning contract performance are matters of contract administration which are not within bid protest jurisdiction of General Accounting Office, and therefore will not be considered.

DECISION

Consolidated Devices, Inc. (CDI), protests the award of a contract to King Nutronics Corporation, under request for proposals (RFP) No. N00123-87-R-1160, issued by the Navy for semi-automatic torque and force calibrators, used in the calibration of tools. In a previous decision, Consolidated Devices, Inc., B-232651, Dec. 20, 1988, 88-2 CPD ¶ 606, we denied in part and dismissed in part another CDI protest challenging this award as having been made on a basis different from that set forth in the solicitation. Here, the protester contends that information it requested through the Freedom of Information Act (FOIA) at the time of its original protest, but which it allegedly has just now received, indicates various procurement improprieties by the agency, including allowing King Nutronics to extend the acceptance period of its offer after closing, and considering the price in a late rejected offer in determining price reasonableness.

We dismiss the protest.

Under our Bid Protest Regulations, protests must be filed not later than 10 working days after the basis of protest is known or should have been known, whichever is earlier; a protest not filed within this period will be dismissed as untimely. 4 C.F.R. § 21.2(a)(2) (1989). The Navy reports that the documents released pursuant to the protester's initial FOIA request (i.e., the releasable portions of the business clearance memorandum, amendments No. 0001 and 0002 to the RFP, and contract No. N00123-88-D-0292), upon which the protester bases its protest here, were mailed to the protester on June 27, 1989, and that subsequently duplicates of some of these materials were faxed to the protester on July 18. In this regard, the record includes a statement from the FOIA officer confirming the dates of release of the cited FOIA material, a transmittal cover letter for the June 27 FOIA material, and copies of the faxed documents received by the protester showing a transmission date of July 18. However, CDI's protest raising the above alleged improprieties was not filed in our Office until August 23, which is 26 working days after the July 18 fax transmission when all of the FOIA material concerning the improprieties should have been received by the protester. This protest therefore is untimely and will not be considered.

CDI contends that it properly waited to protest until receiving, on August 10, the agency's response to a subsequent FOIA request CDI submitted on July 20, after it had received the response to its earlier request. We disagree. It is the date that a basis of protest first is known, here July 18, that starts the running of the 10-day period during which a protester is obligated to file its protest with our Office. The filing of a second FOIA request does not toll the filing deadline for a protest based on information known to the protester prior to the filing of the second request. See Progressive Sheet Metal Co., Inc., B-232440, Sept. 13, 1988, 88-2 CPD ¶ 242.

In any case, the information CDI received on August 10 had no bearing on the alleged deficiencies evidenced in the June 27 and July 18 FOIA materials; rather, it concerned entirely different protest bases, King Nutronics' alleged failure to furnish the first article or on schedule and to deliver first article test reports. These bases of protest concerning contract performance are matters of contract administration, which are not within the bid protest

jurisdiction of our Office, and therefore will not be considered. 4 C.F.R. § 21.3(m)(1); Martin Advertising Agency, Inc., B-225347, Mar. 13, 1987, 87-1 CPD ¶ 285.

The protest is dismissed.

Ronald Berger

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